

REMARKS/ARGUMENTS

Interview

Applicants thank the Examiner and his supervisor for their courtesy and consideration in interviews dated August 21 and September 10, 2008. In the interviews, the withdrawal of claims 24-26 was discussed, and Applicants asserted that the claims at issue were improperly withdrawn. After a discussion, the Examiner and his supervisor agreed that the claims were improperly withdrawn, and that they would be rejoined. Applicants express their thanks for this agreement.

Status of the Claims

Before this Response, claims 1-14 and 20-26 were present for examination. No claims are amended, canceled, or added. Claims 24-26 were withdrawn, but the Examiner has agreed to rejoin the claims. Therefore, claims 1-14 and 20-26 are present for examination, and claims 1, 10, and 24 are the independent claims.

The Office Action dated June 26, 2008 ("Office Action") rejected claims 1-14, 20, 21, and 23 under 35 U.S.C. §103(a) as being unpatentable over the cited portions of Yamauchi et al., U.S. Patent No. 5,907,659 ("Yamauchi"), and further in view of the cited portions of Masukura et al., U.S. Publication No. 2004/0148640 ("Masukura"). The Office Action rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Yamauchi, in view of Masukura, and further in view of the cited portions of Duffield et al., U.S. Patent No. 5,461,427 ("Duffield"). Applicants respectfully request reconsideration for the reasons that follow.

35 U.S.C. §103(a) Rejections, Yamauchi et al.

The Office Action rejected independent claims 1 and 10 under 35 U.S.C. §103(a) as being unpatentable over Yamauchi, in view of Masukura and Official Notice. Explicit factual findings made by the Office are the "necessary underpinnings to establish obviousness." MPEP § 2141(II). As will be discussed below, Applicants respectfully submit that the Office has not established a *prima facie* case of obviousness.

Specifically, neither Yamauchi or Masukura can be relied upon to teach or suggest "transmitting the video program having the first aspect ratio and the [dynamically changing] video conversion information to a second location geographically away from the first location," as recited in claim 1. Claims 10 and 24 contain related limitations.

As a threshold matter, it is worth noting that Yamauchi is directed at a "multimedia optical disc and disc reproduction apparatus which can superimpose subtitles onto a main video image." This localized multimedia video apparatus has at most a tenuous relation to the video distribution systems and methods of the claims. The claims at issue generally set forth a video distribution system where video programs are distributed to locations "geographically away" from the originating location, clearly different than the disc apparatus of Yamauchi.

In the Yamauchi Background section, for example, there is a suggestion that programs with a 4:3 aspect ratio may be converted to 16:9, and vice versa, but little more. The local conversion in Yamauchi from a first to a second aspect ratio falls far short of suggesting the transmission of dynamically changing "video conversion information to a second location geographically away from the first location," set forth in claim 1.

To teach the transmission to a geographically remote location, the Examiner relies on Official Notice that it is known in the art "to transmit a video program and associated metadata over a communications network" (Office Action, p. 4, 5-8). But the content of the metadata is unique in this instance; neither Yamauchi or Masukura suggest the transmission of metadata that is made up of dynamically changing aspect ratio conversion information.

It is worth pointing out that a limitation from claim 1 generally calls for the transmission, to a geographically away location, of *aspect ratio conversion information that dynamically changes* across a stream of images; the references plainly fail to suggest this limitation.

To the extent that Official Notice is being taken that it was known in the art to transmit metadata that is made up of dynamically changing aspect ratio conversion information, Applicants traverse this Official Notice. The MPEP provides that Official Notice without

documentary evidence is only appropriate in "**rare**" cases, a caveat that was not followed in this case. MPEP §2144.03(A). "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." *Id.*

It is respectfully suggested that before the priority date of this Application, the transmission of metadata that is made up of dynamically changing aspect ratio conversion information was not capable of instant and unquestionable demonstration as being well-known. Applicants have therefore "specifically point[ed] out the supposed errors in the examiner's action." MPEP §2144.03(C). If the reliance on Official Notice is maintained, the Applicants hereby request an express showing of documentary proof to support the teaching of these elements (e.g., in the form of an affidavit as set forth in MPEP 2144.03(C).

Applicants respectfully submit that the specified limitations in independent claims 1, 10, and 24 are allowable for at least the foregoing reasons. Claims 2-9, 11-14, 20-23, and 25-26 each depend from these independent claims, and are believed allowable for at least the same reasons as given above. Applicants, therefore, respectfully request that the §103(a) rejections to these claims be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/802,043

Response dated October 24, 2008

Reply to Office Action of June 26, 2008 ("Office Action")

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Drapkin", written over the printed name.

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